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In re Application of :
Zoller, et al :
Application No. 10/725,475 : ON PETITION
Filed: December 3, 2003 :
Attorney Docket No. 100337.54074D8 :

This is a decision on the petition filed October 12, 2004, requesting that the above-identified application be accorded a filing date of December 3, 2004, including a complete Figure 10. The decision on petition, mailed December 27, 2004, is hereby vacated and replaced by the instant decision.

The application was filed on December 3, 2003. However, on August 10, 2004, the Office of Initial Patent Application mailed a "Notice To File Missing Parts of Nonprovisional Application" (Notice) that stated the application had been accorded a filing date, but Figure 10b as described in the specification appears to have been omitted.

In response, on October 12, 2004, the instant petition was submitted. Petitioner asserts Figure 10 was complete as submitted on December 3, 2003.

Petitioner states, "Figure 10 as-filed with this application contains 12 panels which are identified at paragraph 0263 of this application as panels 10A through 10L. Each of these panels are clearly identified and described at paragraph 0263 of the as-filed specification. Therefore, the reference to Figure 10B at page 10, paragraph 0047, in the Brief Description of the Figures in actuality was intended to refer to "Panel B" on Figure 10, which includes 12 panels which should have been labeled as Panels A through L on the single page Figure 10 filed with this application."

Additionally, petitioner has submitted a "Formal version of Figure 10 wherein the panel B legend (as well as panels C through

L) are more clearly labeled. The [Petitioner] respectfully avers to the fact that this figure corresponds identically to Figure 10 originally submitted with this application, except for the fact that it is a more legible version wherein each of Panels A thorough L are explicitly identified." Furthermore, petitioner has submitted a "Second Preliminary Amendment," that corrects paragraph 0047 to properly identify the separate panels in Figure 10.

In view of the above, it appears that the drawing of Figure 10 was complete as filed on December 3, 2003, but mislabeled on the drawing sheet and misidentified in paragraph 0047 of the specification by applicants. Since it is now clear that the drawing of Figure 10 was complete as filed on December 3, 2003, albeit mislabeled and misidentified, the complete Figure 10 may be considered as filed with the application on December 3, 2003.

The petition is granted.

The Examiner shall review, during the examination process, the sufficiency of the corrections made to the "Formal version of Figure 10" as it relates to the corrected description submitted in the "Second Preliminary Amendment."

Please note, the \$130.00 petition fee is required, since a petition was necessary to correct applicants' filing error, and not necessitated by any error on the part of the Office.

This application will be returned to OIPE for further processing with a filing date of December 3, 2003, using the Formal version of Figure 10, submitted October 12, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3228.



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